

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**DONNA CURLING, ET AL.,
Plaintiffs,**

v.

**BRAD RAFFENSPERGER, ET AL.,
Defendants.**

Civil Action No. 1:17-CV-2989-AT

**PLAINTIFFS’ JOINT MOTION TO STRIKE
NEARLY THE ENTIRETY OF STATE DEFENDANTS’ RESPONSE
TO COURT’S REQUEST FOR BRIEFING ON RIPENESS**

Plaintiffs jointly move to strike all but the following sentence in State Defendants’ Response to Court’s Request for Briefing on Ripeness (“Response”):

“Plaintiffs’ BMD claims are ripe.” (Dkt. No. 708 at 2 (emphasis in original).)

State Defendants devote all but that one sentence in their Response to arguing issues this Court did not authorize the parties to brief.

In the very first sentence of their Response, they acknowledge that this

“Court requested that all parties brief whether Plaintiffs’ new claims challenging the BMD system are ripe.” (*Id* at 1.) Instead of simply answering that narrow question, State Defendants devote all but one sentence in their nine-page brief to *re-arguing* standing and mootness, and a new argument that Plaintiffs somehow asserted new, unripe legal claims in “status-report filings” beyond those that

appear in their respective supplemental complaints. State Defendants have briefed standing and mootness multiple times already (Dkt. Nos. 645, 653, 658, 698) and even had oral argument on those issues on December 6, 2019.¹ At most, they could have simply directed the Court to those prior arguments. Their new argument regarding “status-report filings” not only misstates Plaintiffs’ claims and positions regarding implementation of the new BMD-based system,² but Plaintiffs have not been afforded an opportunity to address this argument.

Accordingly, the Court should strike State Defendants’ Response except for the statement that “*Plaintiffs’ BMD claims are ripe,*” or provide Plaintiffs an opportunity to respond if it intends to consider anything more in their Response.

¹ State Defendants’ cited cases prove the impropriety of their Response. Despite some “doctrinal overlap between standing and ripeness analysis,” (Dkt. No. 708 at 2), the courts *separately* decided standing and ripeness in all those cases.

² State Defendants undermine their own argument by admitting that “if the BMD rollout is not complete by the Presidential Preference Primary, the election will be at least partially conducted using hand-marked paper ballots.” (Dkt. No. 708 at 7.) This is true, of course, only because this Court ordered that relief in response to Plaintiffs’ DRE-based claims in this case. (Dkt. No. 579 at 148.) As Plaintiffs have made clear, the concerns they have raised with the Court regarding implementation of the new BMD-based system are not grounded just in their constitutional claims in their respective supplemental complaints, but also in their rights arising from this Court’s August 2019 Order. State Defendants acknowledged this during the January 17, 2020 status conference in arguing that Plaintiffs should file a contempt motion to seek enforcement of this Court’s August 2019 Order regarding such issues as the required default backup plan for hand-marked paper ballots.

Respectfully submitted this 30th day of January, 2020.

/s/ David D. Cross

David D. Cross (*pro hac vice*)
John P. Carlin (*pro hac vice*)
Jane P. Bentrrott (*pro hac vice*)
Mary G. Kaiser (*pro hac vice*)
Robert W. Manoso (*pro hac vice*)
MORRISON & FOERSTER LLP
2000 Pennsylvania Avenue, NW
Suite 6000
Washington, DC 20006
(202) 887-1500

/s/ Halsey G. Knapp, Jr.

Halsey G. Knapp, Jr.
GA Bar No. 425320
Adam M. Sparks
GA Bar No. 341578
KREVOLIN & HORST, LLC
1201 West Peachtree Street, NW
Suite 3250
Atlanta, GA 30309
(404) 888-9700

Counsel for Plaintiffs Donna Curling, Donna Price & Jeffrey Schoenberg

/s/ Bruce P. Brown

Bruce P. Brown
Georgia Bar No. 064460
BRUCE P. BROWN LAW LLC
1123 Zonolite Rd. NE
Suite 6
Atlanta, Georgia 30306
(404) 881-0700

/s/ Robert A. McGuire, III

Robert A. McGuire, III
Admitted Pro Hac Vice
(ECF No. 125)
ROBERT MCGUIRE LAW FIRM
113 Cherry St. #86685
Seattle, Washington 98104-2205
(253) 267-8530

Counsel for Coalition for Good Governance

/s/ Cary Ichter

Cary Ichter
Georgia Bar No. 382515
ICHTER DAVIS LLC
3340 Peachtree Road NE
Suite 1530
Atlanta, Georgia 30326
(404) 869-7600

*Counsel for William Digges III, Laura Digges,
Ricardo Davis & Megan Missett*

/s/ John Powers

John Powers

David Brody

Lawyers' Committee for Civil Rights

Under Law

1500 K St. NW, Suite 900

Washington, DC 20005

(202) 662-8300

Counsel for Coalition Plaintiffs

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of LR 5.1, using font type of Times New Roman and a point size of 14.

/s/ David D. Cross

David D. Cross

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2020, a copy of the foregoing **PLAINTIFFS' JOINT MOTION TO STRIKE NEARLY THE ENTIRETY OF STATE DEFENDANTS' RESPONSE TO COURT'S REQUEST FOR BRIEFING ON RIPENESS** was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing to all attorneys of record.

/s/ David D. Cross
David D. Cross